

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
TUESDAY, DECEMBER 20, 2022**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m. on Tuesday, December 20, 2022**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Monday, December 19, 2022**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE TRISHA J. HIRASHIMA** and if oral argument is requested, it will be heard in **Department 31**, located at 10820 Justice Center Drive, Roseville, California.

<p>PLEASE NOTE: REMOTE APPEARANCES ARE STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Local Rule 10.24.) More information is available at the court's website: www.placer.courts.ca.gov.</p>

1. M-CV-0019965 Gilman, Kevan H v. Sweeney, Mike

Judgment creditors' motion for enforcement costs (filed May 3, 2021) is dropped as moot in light of the "Notice of Mootness of Motion" creditors filed December 5, 2022.

2. M-CV-0078391 Discover Bank v. Renfro, Bobbiee G

The motion for entry of judgment is dropped from calendar as no moving papers were filed with the court.

3. M-CV-0080477 Wells Fargo Bank, NA v. Patterson, Denise

Plaintiff's Motion for Summary Judgment

Plaintiff's request for judicial notice is granted.

Plaintiff Wells Fargo Bank, N.A. moves for summary judgment on its causes of action for breach of contract and common counts against defendant Denise Patterson.

The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar*

v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at 850.

Plaintiff submits admissible evidence which establishes the existence of a written credit card agreement between the parties by which plaintiff extended credit to defendant in exchange for repayment, defendant's use of the credit card to incur charges, and defendant's default on the payment of her obligations owed pursuant to the agreement. (SSUMF 1-6.) Plaintiff has satisfied its burden as the moving party, and the burden shifts to defendant to establish a triable issue of material fact. However, as defendant filed no opposition to the motion, she fails to meet her burden.

Based on the foregoing, plaintiff's motion for summary judgment is granted. Plaintiff is entitled to judgment in its favor in the principal amount of \$9,879.92. Plaintiff is also entitled to reasonable attorneys' fees and costs, which shall be determined by a separate motion for fees and the timely filing of a memorandum of costs.

4. M-CV-0081035 Western Surety Co. v. Johnson, Jason

Plaintiff's Motion to Discharge and Dismiss Stakeholder

Plaintiff's motion to deposit by stakeholder and discharge of stakeholder is granted in part.

Plaintiff holds a contractor's surety bond obtained by Jason Johnson aka Jason Victor Johnson individually and dba Johnson Construction. Defendants Richard Fisher, Gail Fisher and Glen McGuire have filed claims against the bond. Plaintiff seeks to deposit with the court \$15,000 (the maximum liability, as per Business and Professions Code section 7071.6(b)) and be discharged from liability. The court will discharge plaintiff from liability and then determine the rights of the various claimants to the property that has been deposited with the court. (Code Civ. Proc., § 386(b).) A surety may interplead the bond funds to minimize the surety's risk. (*Karton v. Ari Design & Construction Inc.* (2d Dist. 2021) 61 Cal.App.5th 734, 751–54.) Here, plaintiff claims no interest in the bond funds and the claim from defendant Isola exceeds the amount of the bond. The motion for deposit by stakeholder is granted. Plaintiff shall deposit the total bond amount with the clerk of the court forthwith.

As to attorneys' fees, the court has the discretion to award reasonable attorney fees "*from the amount in dispute which has been deposited with the court.*" (Code Civ. Proc., § 386.6, subd. (a), emphasis added.) Plaintiff must deposit the funds with the court prior to obtaining an attorneys' fees award from it. (*Wells Fargo Bank v. Zinnel* (3d Dist. 2004) 125 Cal.App.4th 393, 400–03.) **Accordingly, the matter is set for further hearing on January 10, 2023, at 8:30 a.m. in Department 31, to address the requested orders for discharge, restraining orders and attorneys' fees and costs.**

5. S-CV-0039661 Miner's Camp v. Foresthill Public Utility Dist.

This tentative ruling is issued by the **Honorable Commissioner Michael A. Jacques**. If oral argument is requested, it will be heard on **December 21, 2022 at 8:15 a.m. in Department 40** before Commissioner Michael A. Jacques. The court can allocate no more than 15 minutes to this hearing. If a hearing is requested, the parties will be reminded that the court has read the papers and argument should be limited to responding to the tentative ruling or highlighting argument from the papers.

Moving party is advised the notice of motion includes incorrect information of the court's tentative ruling procedures. Requests for oral argument must be made by calling (916) 408-6481 no later than 4:00 p.m. on the court day prior to the hearing. (Local Rule 20.2.3(c).)

Petitioner's Motion for Determination of Restitution

Petitioner filed a petition for writ of mandate and complaint for declaratory relief and restitution. At oral argument on the petition, the parties discussed restitution and the court indicated its intention to retain jurisdiction over the issue and the parties may bring it back before the court if they were not able to reach a resolution. The parties, through counsel, agreed. The court issued the peremptory writ of mandate and the judgment specified respondent shall make restitution to petitioner of all fees and charges illegally collected from April 26, 2017 and the court would retain jurisdiction on the issue of restitution. Petitioner now seeks restitution from respondent and defendant following judgment.

Evidentiary Rulings

Respondent's request for judicial notice is granted. Respondent's objections are overruled. Petitioner's request for judicial notice is granted as to the fact of publication but not to the truth of the assertions contained therein. Petitioner's objections are overruled.

Ruling on the Motion

Petitioner is entitled to restitution for all fees and charges respondent illegally collected from petitioner from April 26, 2017. Respondent contends because the judgment is final following an appeal and remittitur, this court lacks jurisdiction to order restitution. However, in this case the court in open court voiced its intention to retain jurisdiction over the issue of restitution, directed the parties to meet and confer, and invited the parties to bring this matter back before the court by noticed motion. Counsel for both parties agreed to such procedures in open court. Respondent could have voiced an objection, requested a hearing be set, or requested other parameters on such a retention; respondent did not. Accordingly, the court's consideration of restitution is procedural in

nature and an exercise of its inherent authority. Furthermore, respondent does not present any citation to authority that requires their requested outcome.

As to the amount of restitution, appearance is required as indicated above.

6. S-CV-0043421 Schauer, Gary v. Spencer T Malysiak Law Corp.

Motion to Compel Gary Schauer's Further Responses to Request for Production of Documents, Set Three,

Defendant's motion to compel Gary Schauer's further responses to Request for Production of Documents, Set Three is granted.

The subject responses fail to comply with the requirements of the Code of Civil Procedure, and in particular Code of Civil Procedure section 2031.220. Further, the production of documents did not comply with Code of Civil Procedure section 2031.280. The court notes that plaintiff is obligated to produce responsive documents, and may not unilaterally withhold what plaintiff believes to be irrelevant documents, particularly given that plaintiff did not object to any of the requests. Any doubts as to relevance should generally be resolved in favor of permitting discovery. *Williams v. Superior Court*, (2017) 3 Cal.5th 531, 542.

The remaining issue to address is whether monetary sanctions should be awarded here. Monetary sanctions generally must be imposed against any party that unsuccessfully makes or opposes a motion to compel further responses to request for production of documents. Code of Civil Procedure section 2031.310(h). Sanctions need not be imposed where a party acted with substantial justification or the imposition of sanctions would be unjust. *Ibid*. The court declines to award sanctions at this time.

Plaintiff shall serve further responses to Request Nos. 8-16, and all responsive documents, on or before January 16, 2023.

Motion to Compel Janet Schauer's Further Responses to Request for Production of Documents, Set Three,

Defendant's motion to compel Janet Schauer's further responses to Request for Production of Documents, Set Three is granted.

The subject responses fail to comply with the requirements of the Code of Civil Procedure, and in particular Code of Civil Procedure section 2031.220. Further, the production of documents did not comply with Code of Civil Procedure section 2031.280. The court notes that plaintiff is obligated to produce responsive documents, and may not unilaterally withhold what plaintiff believes to be irrelevant documents, particularly given that plaintiff did not object to any of the requests. Any doubts as to relevance should generally be resolved in favor of permitting discovery. *Williams v. Superior Court*, (2017) 3 Cal.5th 531, 542.

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Plaintiff shall serve further responses to Request Nos. 8-16, and all responsive documents, on or before January 16, 2023.

7. S-CV-0043619 Easton, Jennifer Jo v. Rawlins, Shawn L

Plaintiff's motion for summary adjudication is continued to be heard **January 3, 2023 at 8:30 a.m. in Department 31** before the Honorable Trisha J. Hirashima. The court finds good cause to permit the motion to be heard within thirty days of trial.

8. S-CV-0047963 Wilson, Marcole v. Nissan No. America Inc.

Plaintiffs are advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Motion for Leave to File First Amended Complaint

Plaintiffs' unopposed motion for leave to file a first amended complaint is granted. Plaintiffs shall file their first amended complaint by December 30, 2022.

9. S-CV-0048033 Pocklington, Adrien v. Setter, Bart

Appearance is required on December 20, 2022 at 8:30 a.m. in Department 31 before the Honorable Trisha J. Hirashima.

10. S-CV-0048311 Dicken, Leonard v. Chamberlain, Anton

Moving party is advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Motion to Be Relieved as Counsel

Counsel John Anderson's motion to be relieved as counsel for plaintiff Leonard Dicken is granted, effective upon the filing of proof of service of the signed order on plaintiff. Counsel is directed to file a proposed order (form MC-053) for the court's review.

11. S-CV-0048645 McDonnell, Nastasha v. Davis, Robin

Appearance is required for hearing on the petitions to approve the compromise of the wrongful death claims brought for Leland Thomas Benjamin McDonnell, Skyla Star McDonnell, and Winifred Amani McDonnell. The appearance of each minor is excused.

The petitions are denied. Petitioner Natasha McDonnell impermissibly requests distribution of all settlement amounts to herself to offset child and family maintenance costs. Minors' wrongful death recoveries are property of *each minor*, not property of petitioner or of minors' family generally. Any recipient of said proceeds receives them only in a fiduciary capacity and must hold and utilize the funds for *minors'* benefit. Other uses of funds, such as for expenditures which may also benefit minors' family, require appropriate requests, good cause shown, and authorization by the court.

At the hearing, the court will consider whether petitioner should be removed as guardian ad litem and be ordered to seek appointment of a neutral guardian ad litem for each minor.

12. S-CV-0048697 Thurston, Sarah v. Place Industries

The motion to compel arbitration is continued to be heard January 3, 2023 at 8:30 a.m. in Department 31 by the Honorable Trisha J. Hirashima. The court apologizes to the parties for any inconvenience.

13. S-CV-0048959 Shalileh, Kambiz v. Home Depot U.S.A. Inc.

Demurrer to Complaint

Defendant Home Depot U.S.A., Inc. demurs to each cause of action alleged in plaintiff Kambiz Shalileh's complaint.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

A demurrer for uncertainty is appropriate where "[t]he pleading is so incomprehensible that a defendant cannot reasonably respond." *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135. In other words, a court should sustain a demurrer if the deficiency "substantially impair[s] [a defendant's] ability to understand the complaint." *Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139,

n.2. The central facts upon which determination of the controversy depends should be stated with clearness and precision so that nothing is left to surmise. *Philbrook v. Randall* (1942) 195 Cal. 95, 103.

As to the first cause of action for breach of contract, the demurrer is overruled. The complaint alleges fact to support the claim and at the pleading stage, the court accepts the allegations as true. Nor is the complaint so incomprehensible that defendant cannot understand the cause of action or the allegations that it contains.

As to the second cause of action for intentional misrepresentation, the demurrer is sustained. The elements for intentional misrepresentation are “(1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and, (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff.” *Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 434. Each element of a misrepresentation claim must be pleaded with particularity. *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157. “[S]pecific pleading is necessary to ‘establish a complete causal relationship’ between the alleged misrepresentations and the harm claimed to have resulted therefrom.” *Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1092. Justifiable reliance is required to establish causation on a fraud claim. *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 976.

Plaintiff fails to plead sufficient facts demonstrating that defendant knew its representations were false when made, intended that plaintiff rely on the false representations, or that plaintiff did in fact rely on the representations to his detriment. The allegations of the complaint suggest that plaintiff did not in fact rely on representations that the delivered tile was from the same dye lot to his detriment, as he immediately discovered the errors, and informed defendant of the same.

Defendant also argues that the second cause of action is barred by the statute of limitations. It is well-established that a “limitations period begins once the plaintiff has notice or information of circumstances to put a reasonable person on inquiry.” *Jolly v. Eli Lilly & Co.*, (1988) 44 Cal.3d 1103, 1109 (citing *Gutierrez v. Mofid*, (1985) 39 Cal.3d 892, 896). The allegations of the complaint suggest that plaintiff was unaware of the specific facts that triggered the claim until August 19, 2019. Based on the allegations, the court cannot find as a matter of law that the claim is barred by the statute of limitations. Plaintiff is given leave to amend as to the second cause of action.

As to the third cause of action for concealment, the demurrer is sustained.

[T]he elements of an action for fraud and deceit based on concealment are:
(1) the defendant must have concealed or suppressed a material fact, (2)

the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.

Marketing West, Inc. v. Sanyo Fisher (USA) Corp. (1992) 6 Cal.App.4th 603, 612-613. The requirement that fraud must be pleaded with specificity applies equally to a cause of action for fraud and deceit based on concealment. *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248. Plaintiff fails to allege facts supporting the necessary elements of this claim with requisite specificity. In addition to failing to allege facts demonstrating that defendant intentionally concealed facts in order to defraud plaintiff, the allegations of the complaint suggest that plaintiff immediately discovered the errors, and informed defendant of the same. Plaintiff is given leave to amend the third cause of action.

As to the fourth cause of action for false promise, the demurrer is sustained. Under Civil Code section 1709, a party may be liable for fraudulent deceit if he “deceives another with intent to induce him to alter his position to his injury or risk...” Civ. Code section 1709; *see also Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1059. Under such a claim, plaintiff must allege that defendant made a promise without any intention of performing it, and must also allege the elements of fraud with particularity. *Id.* at 1060. As with the second cause of action, the court finds the allegations are insufficiently pleaded to state a valid cause of action. Plaintiff is given leave to amend the fourth cause of action.

As to the fifth cause of action for promissory estoppel, the demurrer is sustained. To support this cause of action, plaintiff must allege (1) a promise clear and unambiguous on its terms; (2) reliance by the party to whom the promise is made; (3) the reliance must be reasonable and foreseeable; and (4) the party asserting estoppel must be injured by his or her reliance. *Laks v. Coast Fed. Sav. & Loan Ass’n* (1976) 60 Cal.App.3d 885, 890. Plaintiff fails to allege a promise or promises that were clear and unambiguous on their terms, upon which he reasonably relied to his detriment. Plaintiff is given leave to amend the fifth cause of action.

As to the sixth cause of action for violation of the CLRA, demurrer is overruled. The complaint alleges fact to support the claim and at the pleading stage, the court accepts the allegations as true. The court does not conclude based on the allegations, as a matter of law, that this cause of action is barred by the applicable statute of limitations.

In summary, the demurrer is overruled as to the first and sixth causes of action. The demurrer is sustained with leave to amend as to the second, third, fourth and fifth causes of action. Any amended complaint shall be filed and served on or before January 13, 2022.

Motion to strike

Defendant's motion to strike is granted in its entirety. Leave to amend is granted in light of the court's granting of leave to amend with respect to plaintiff's fraud-based claims. Any amended complaint shall be filed and served on or before January 13, 2022.

14. S-CV-0049047 Livermore, Thomas v. Hyundai Motor America

The motion to compel arbitration is dropped from calendar as no moving papers were filed with the court.
